

REMARKS

Claims 1-37 are pending.

Claims 1, 3, 4, 9, 10, 12-16, 18-20, 23-26, 28-31, 33, 34, 36 and 37 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Cheriton.

In order to expedite prosecution, Applicant has amended independent claims 1, 16, 28 and 33. It is believed that the scope of at least these claims have been broadened in some aspects and narrowed in other aspects.

Applicant respectfully draws the attention of the Examiner to Cheriton at col. 3, lines 54-55 which states that “[i]t is **important** to note that the RDMA option is simply an annotation or byte code **within** the TCP header” (emphasis added).

Claim 1 recites, in part, “wherein the self-describing header is not part of a transport protocol header or a network protocol header of the transport protocol segment”. Claim 16 recites, in part, “the self-describing header not being part of a transport protocol header of the transport protocol segment”. Claim 28 recites, in part, “inserting a self-describing header that is not part of a transport protocol header or a network protocol header in a transport protocol segment”. Claim 33 recites, in part, “locating an indicator residing outside of a transport protocol header in an out-of-order transport protocol segment”.

Thus, since the Office Action has alleged that the self-describing header and the indicator correspond to the RDMA option and that Cheriton emphasizes the importance of the RDMA option being simply an annotation or code within the TCP header, Cheriton not only does not describe at least these elements, but Cheriton teaches away from the claimed inventions as set forth in claims 1, 16, 28 and 33.

Thus, it is respectfully submitted that it would be improper to combine Cheriton in an obviousness rejection with a document that allegedly makes up for the teaching deficiencies of Cheriton, since Cheriton would necessarily teach away from such a document.

It is therefore respectfully requested that Cheriton be withdrawn as a reference and that

the anticipation rejection be withdrawn with respect to claims 1, 3, 4, 9, 10, 12-16, 18-20, 23-26, 28-31, 33, 34, 36 and 37.

Claims 2, 6, 7, 11, 17, 21, 32 and 35 stand rejected under 35 U.S.C. § 103(a) based, at least in part, on Cheriton.

For the reasons stated, it is believed that Cheriton does not teach at least the elements as set forth in the independent claims 1, 16, 28 and 33 from which claims 2, 6, 7, 11, 17, 21, 32 and 35 depend. Accordingly, it is believed that a *prima facie* case of obviousness has not been presented.

In addition, Applicant respectfully submits that Cheriton teaches away from the claimed inventions as set forth in the independent claims 1, 16, 28, and 33, as discussed above, which is a *significant factor* in determining obviousness. See, e.g., M.P.E.P. § 2145(X)(D)(1) (“A prior art reference that ‘teaches away’ from the claimed invention is a significant factor to be considered in determining obviousness”). Accordingly, Cheriton teaches away from the claimed inventions as set forth in claims 2, 6, 7, 11, 17, 21, 32 and 35.

For at least the above reasons, it is respectfully requested that the rejection under 35 U.S.C. § 103(a) be withdrawn with respect to claims 2, 6, 7, 11, 17, 21, 32 and 35.

Claims 28-32 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Although Applicant disagrees with the analysis and questions the applicability of *Warmerdam* to the present facts, Applicant has simplified the preamble. It is respectfully requested that the rejection under 35 U.S.C. § 101 be withdrawn with respect to claims 28-32.

Conclusion

Applicant does not necessarily agree or disagree with the Examiner’s characterization of the documents made of record, either alone or in combination, or the Examiner’s characterization of recited claim elements. Furthermore, Applicant respectfully reserves the right to argue the characterization of the documents of record, either alone or in combination, to argue what is allegedly well known, allegedly obvious or allegedly disclosed, or the characterization of the

recited claim elements should that need arise in the future.

With respect to the present application, Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor or related application. The Examiner is advised that any previous disclaimer of claim scope, if any, and the alleged prior art that it was made to allegedly avoid, may need to be revisited. Nor should a disclaimer of claim scope, if any, in the present application be read back into any predecessor or related application.

In view of at least the foregoing, it is respectfully submitted that the present application is in condition for allowance. Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, to charge any fee deficiencies or to credit any overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

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Respectfully submitted,

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